

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

IN RE

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

304

No. 71-1099

UNITED STATES OF AMERICA,

Appellee,

v.

ROBERT L. PHILLIPS,

Appellant.

APPEAL FROM A JUDGMENT OF THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLANT

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United States Court of Appeals
for the District of Columbia Circuit

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Nathan J. Paulson
CLERK

TABLE OF CONTENTS

QUESTIONS PRESENTED	1
STATEMENT OF THE FACTS	-
ARGUMENT I	
Under the special circumstances of this case, the appellant was denied a fair trial by the purposeful and unjustified delay between the alleged purchase of narcotics and his arrest	6
ARGUMENT II	
Taking the view most favorable to the gov- ernment the evidence presented is insufficient to support the verdict	8
CONCLUSION	9

TABLE OF CASES

Jackson v. United States, 122 U.S.App.D.C. 124, 351 F.2d 321 (1965)	3
Nickens v. United States, 116 U.S.App.D.C. 336, 323 F.2d 303 (1963)	3
*Ross v. United States, 121 U.S.App.D.C. 233, 349 F.2d 210 (1965)	6,7
Wilson v. United States, 113 U.S.App.D.C. 319, 335 F.2d 932 (1964)	3,9
*Woody v. United States, 125 U.S.App.D.C. 192, 370 F.2d 214 (1966)	6,7

*Cases Chiefly Relied Upon

IN THE
UNITED STATES COURT OF APPEALS
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No. 71-1099

UNITED STATES OF AMERICA,

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ROBERT L. PHILLIPS,

Appellant.

APPEAL FROM A JUDGMENT OF THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLANT

QUESTIONS PRESENTED:

1. Whether, under the special circumstances of the instant case, a purposeful delay between offense and application for warrant and a further delay before execution of said warrant was a denial of the appellant's due process rights according to the Fifth Amendment to the Constitution of the United States.

This case has not been previously before this Court.

2. Whether, taking the view most favorable to the government, the evidence presented is insufficient to support the verdict.

REFERENCES TO RULINGS-NONE

STATEMENT OF THE FACTS

The appellant, Robert L. Phillips was charged in a three count indictment with violations of the Federal narcotic laws. 26 U.S.C. 4705(a), Sale of Narcotic Drugs; 26 U.S.C. 4704(a) Purchase and Sale of Narcotic Drugs not in Original Stamped Package; 21 U.S.C. 174 Facilitation of Concealment and Sale of Narcotic Drugs. On July 20, 1970, trial by jury on the aforementioned charges was held in the United States District Court for the District of Columbia before the Honorable Barrington Parker. After a jury verdict of guilty the appellant was sentenced to a term of five years on counts one and three; he was also sentenced to a term of from one to three years on count two, the said sentence to run concurrently to counts one and three of the indictment.

A timely notice of appeal was filed from the aforesaid sentence on December 1, 1970 and the case is here present before this Court for review.

At the trial, the government's principal witness was Officer William Saunders. This witness testified that he was a member of the Metropolitan Police Force, assigned to the Morals Division in an undercover capacity to concentrate on illegal

narcotics activity. (T-8) He had been on the force for only a short time when he received the undercover assignment. (T-13) During the course of his undercover activities, he frequented a place known as the Fantasy Bar which was located at 1355 U Street, N.W. within the District. (T-9) On September 4, 1969, the witness testified that he purchased a quantity of illicit narcotics from a person known as "Patch", (T-10) This person was described as having a patch on the side of his face. (T-13) The witness subsequently identified this appellant as the person from whom he purchased the illicit drugs. (T-17) Officer Saunders further testified that application was made for a warrant of arrest and that his affidavit was submitted in support of the warrant. The warrant of arrest for a "John Doe" was issued on December 22, 1969 and executed on February 11, 1970. (T-13)

On cross examination, the witness stated that during the course of his activities, he had been to the Fantasy Bar on a number of occasions and the appellant was there most of the time. (T-23 & 24) After the warrant was issued, the officer went to the bar on two occasions in search of the appellant to execute the warrant. (T-25) In his affidavit, the witness gave a physical description of the offender and further identified him by the name "Patch". There was no mention of any abnormal growth of hair from the offender's face; but mention was made of a goatee. (T-39) A third

affidavit also mentions a goatee but no abnormal growth of hair on the face. (T-40) Over government objection, appellant's trial counsel was permitted to illicit information from the witness concerning a "Police Case Report." The report was a record of the appellant's name, address and physical description made subsequent to his arrest on the pending charges. The report contained a conspicuous mention of a "patch of hair, right cheek." (T-46) This report was not prepared by the witness and was not seen by him prior to trial. The Officer was unable to indicate why he omitted a distinct physical feature of the appellant from his warrant application. (T-56)

Officer Steven Funkelberg, a plainclothes officer, assigned to the Narcotics Section of the Metropolitan Police Department also testified for the government. He was involved in Officer Saunders' work. He recalled that when Saunders turned over the narcotics after their purchase, a description was given by the undercover agent to the effect that the seller had "hair growing out of his face." (T-61) Officer Funkelberg executed the warrants for the appellant, though he did not take part in the preparation of a submission of the warrant to the magistrate. To effect an execution of the warrant for this appellant, the officer went up to the area of 14th and U Streets (T-63) but never went into the Fantasy Bar to seek the appellant. (T-65)

Sargeant Anthony Morris testified for the government to the effect that he was a member of the Metropolitan Police Department assigned to the Narcotics Squad; he was directly in charge of the undercover activities of Officer Saunders. (T-30). It was this witness, who actually prepared all the paper work including the warrant application in the undercover case. (T-32) He prepared approximately 13 or 14 warrant applications arising out of Officer Saunders' activities; but he had never seen this appellant, nor a photograph of him when he prepared these applications. (T-33) The witness explained a discrepancy in the warrant application and the P.D. 63-A identification sheet as an administrative error.

The defense called Bernice Davis who was the manager of the Fantasy Restaurant when the alleged events took place in his case. She testified that she had known the appellant for more than a year prior to the trial as he was one of two custodians in the Restaurant, though not carried on the company books as such. (T-102) The witness knew the appellant by the name of "Patch" a term derived from a patch on his face. She further testified that during the time she had known him, the appellant was always in the Restaurant on a daily basis, except Sunday. (T-103)

The appellant Robert L. Phillips testified in his own behalf to the effect that he was employed at the Fantasy Bar in September 1969 and that he did not sell any narcotics

to Officer Saunders. (T-107) He further testified on cross-examination that his nickname is "Patch" but some persons also call him "Halfbeard". (T-109) He was unaware that there were outstanding warrants for his arrest on the narcotic charges. (T-113)

ARGUMENT I

Under the special circumstances of this case, the appellant was denied a fair trial by the purposeful and unjustified delay between the alleged purchase of narcotics and his arrest.

The appellant contends that under the principles set forth in Ross v. United States, 121 U.S.App.D.C. 233, 349 F.2d 210 (1965) and Woody v. United States, 125 U.S.App.D.C. 192, 370 F.2d 214 (1966) he was denied a fair trial. In Ross, the Court recognized the need to balance the public interest in undercover narcotic investigations by the police and the accused person's Fifth Amendment right of due process. The dispositive factors in striking this balance were the reasonableness of the police conduct and the prejudice to the accused resulting from the undercover police investigation. This Court said in Woody, supra,

"Since the prejudice to the accused in these cases is a function of police investigative methods, the police have the power and corresponding obligation to minimize it. The reasonableness of their conduct therefore depends on the extent to which they make an effort to reduce unnecessary risks of erroneous conviction. Such needless and unwarranted risks are created where,

for example, the delay is unreasonably lengthy or wholly unnecessary, or where the police have it within their power to enhance the reliability of their method of identification without jeopardizing their undercover investigation, yet fail to do so."

Appellant suggests that the facts of this case illustrate in poignant fashion the dangers which Ross and Woody sought to proscribe. The police here sought a warrant some three and one-half months after the alleged illegal sale, yet almost two more months passed before the warrant was executed. Significantly, the record discloses that the police made only the most inadequate attempts to execute the warrant; indeed, they made but one effort to actually go into the Fantasy Bar, the place where the criminal activity is alleged to have occurred. The uncontroverted testimony of defense witnesses disclose that the appellant could be found on a regular and daily basis in the Fantasy Bar. In fact, the arrest of appellant was within a short distance of the Bar.

Clearly, the gross insensitivity of the police toward the interest of an accused person come into stark review when the fact that a discernable and obviously distinguished facial characteristic was omitted from the initial "John Doe" warrant. The government has yet to offer any explanation to this omission. Appellant can think of no clearer "special circumstances" which warrant scrutiny by this Court.

Appellant suggests to the Court that the prejudice in this case is obvious and overwhelming. A year after the

alleged offense, a single individual, makes an in-court identification accusing him of a crime which is subsequently shown to rest on questionable legs. Jackson v. United States, 122 U.S.App.D.C. 124, 251 F.2d 321 (1955); Wilson v. United States, 113 U.S.App.D.C. 319, 355 F.2d 932 (1964); see also Hickens v. United States, 116 U.S.App.D.C. 333, 323 F.2d 303 (1963).

ARGUMENT II

Taking the view most favorable to the government the evidence presented is insufficient to support the verdict.

It is well settled that the uncorroborated testimony of a narcotics agent is sufficient to support conviction for violation of narcotics laws. Wilson v. United States, 113 U.S.App.D.C. 319, 355 F.2d 932 (1964) but the appellant submits that where the facts cogently illustrate abuses of law enforcement officers, obvious misgivings arise. The facts in this case were forewarned by Judge Wright in Hickens v. United States, 116 U.S.App.D.C., 333 at 343, 323 F.2d 303, at 313 (1963)

"Indeed, a suspect may be at a special disadvantage when complaint or indictment or arrest, is purposefully delayed. With no knowledge that criminal charges are to be brought against him, an innocent man has no reason to fix in his memory the happenings on the day of the alleged crime. Memory grows dim with the passage of time. Witnesses disappear. With each day, the accused

becomes less able to make out his defense. If, during the delay, the Government's case is already in its hands, the balance or advantage shifts more in favor of the Government the more the Government lags."

Appellant submits that the unexplained failure of the undercover officer to mention the presence of the identifying characteristic of this appellant in the warrant application coupled with the attendant delay of five months between the alleged offense and execution of the warrant was clearly the case where a trial court should refuse to apply the rule in Wilson supra.

CONCLUSION

Based on the foregoing, the appellant believes that the lower court erred in not granting appellant's motion for acquittal.

Respectfully submitted,

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BRIEF FOR APPELLEE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
for the District of Columbia Circuit

No. 71-1099 FILED MAR 24 1972

UNITED STATES OF AMERICA, Appellee,

v.

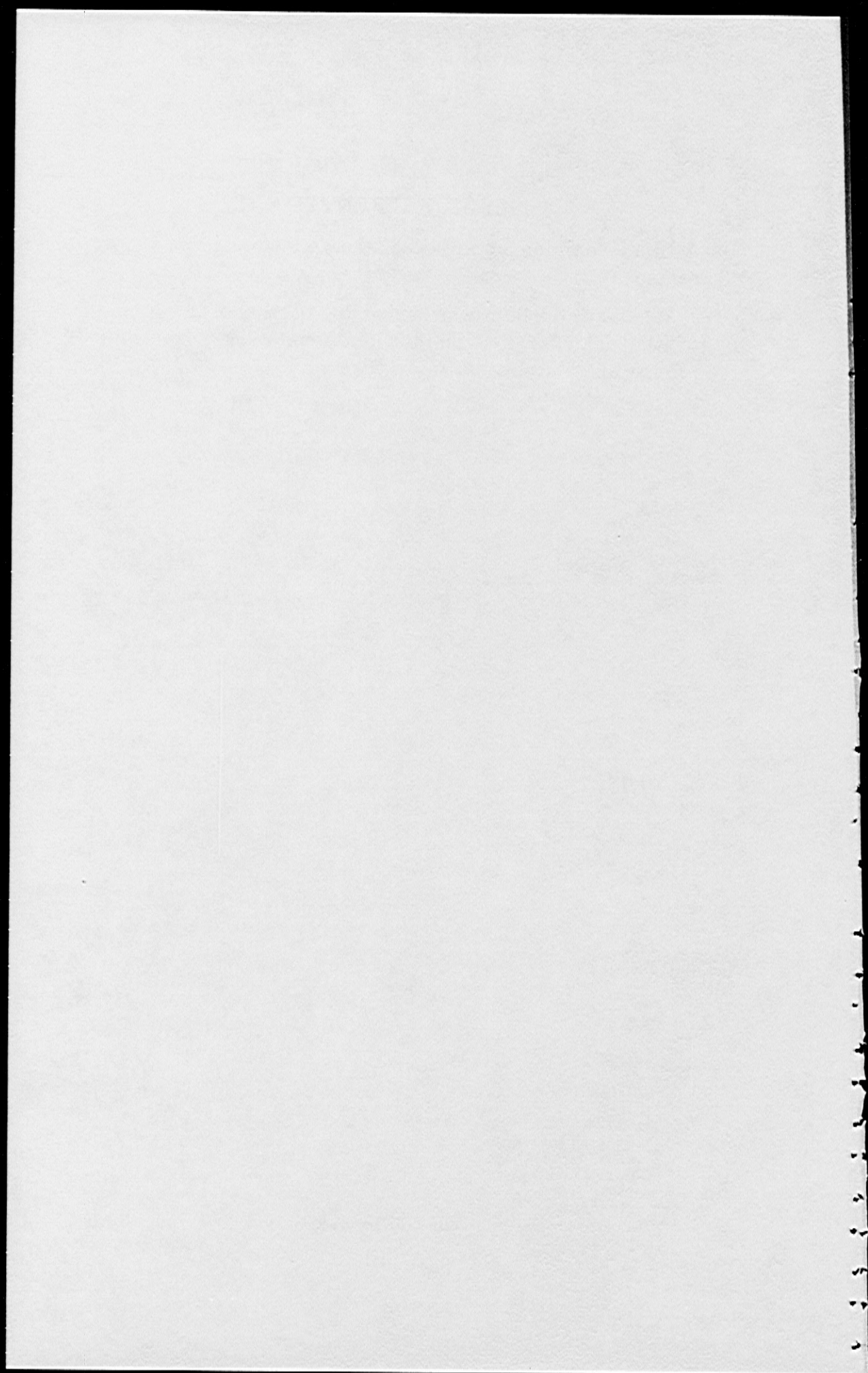
ROBERT L. PHILLIPS, Appellant.

Appeal from the United States District Court
for the District of Columbia

HAROLD H. TITUS, JR.
United States Attorney.

JOHN A. TERRY,
ROBERT D. ZSALMAN,
Assistant United States Attorneys.

Cr. No. 707-70



INDEX

	Page
Counterstatement of the Case.....	1
Argument:	
Appellant should be precluded from raising, for the first time on appeal, the issue of delay between the offense and the arrest; and in any event, appellant was not denied due process because of the delay of five months and one week between offense and arrest....	3
Conclusion	7

TABLE OF CASES

<i>Bey v. United States</i> , 121 U.S. App. D.C. 337, 350 F.2d 467 (1965), cert. denied, 385 U.S. 905 (1966).....	4
<i>Bynum v. United States</i> , 133 U.S. App. D.C. 4, 408 F.2d 1207 (1968), cert. denied, 394 U.S. 935 (1969).....	3
<i>Dancy v. United States</i> , 129 U.S. App. D.C. 413, 395 F.2d 636 (1968)	6
<i>Haddad v. United States</i> , 349 F.2d 511 (9th Cir.), cert. denied, 382 U.S. 896 (1965).....	3
<i>Hood v. United States</i> , 125 U.S. App. D.C. 16, 365 F.2d 949 (1966)	3
* <i>Jackson v. United States</i> , 122 U.S. App. D.C. 124, 351 F.2d 821 (1965)	5
* <i>Morgan v. United States</i> , 115 U.S. App. D.C. 310, 319 F.2d 711 (1963)	7
* <i>Nickens v. United States</i> , 116 U.S. App. D.C. 338, 323 F.2d 808 (1963)	6
* <i>Powell v. United States</i> , 122 U.S. App. D.C. 229, 352 F.2d 705 (1965)	6
<i>Ross v. United States</i> , 121 U.S. App. D.C. 233, 349 F.2d 210 (1965)	3, 4, 5
<i>United States v. Gaines</i> , 140 U.S. App. D.C. 402, 436 F.2d 150 (1970)	5
<i>United States v. Indiviglio</i> , 352 F.2d 276 (2d Cir. 1965) (en banc), cert. denied, 383 U.S. 907 (1966).....	3
* <i>Wilson v. United States</i> , 118 U.S. App. D.C. 319, 335 F.2d 982 (1964)	7
<i>Woody v. United States</i> , 125 U.S. App. D.C. 192, 370 F.2d 214 (1966)	3, 4, 5

	Page
<i>Worthy v. United States</i> , 122 U.S. App. D.C. 242, 352 F.2d 718 (1965), <i>vacated</i> , 384 U.S. 894 (1966).....	4

OTHER REFERENCES

21 U.S.C. § 174	1
26 U.S.C. § 4704 (a)	1
26 U.S.C. § 4705 (a)	1

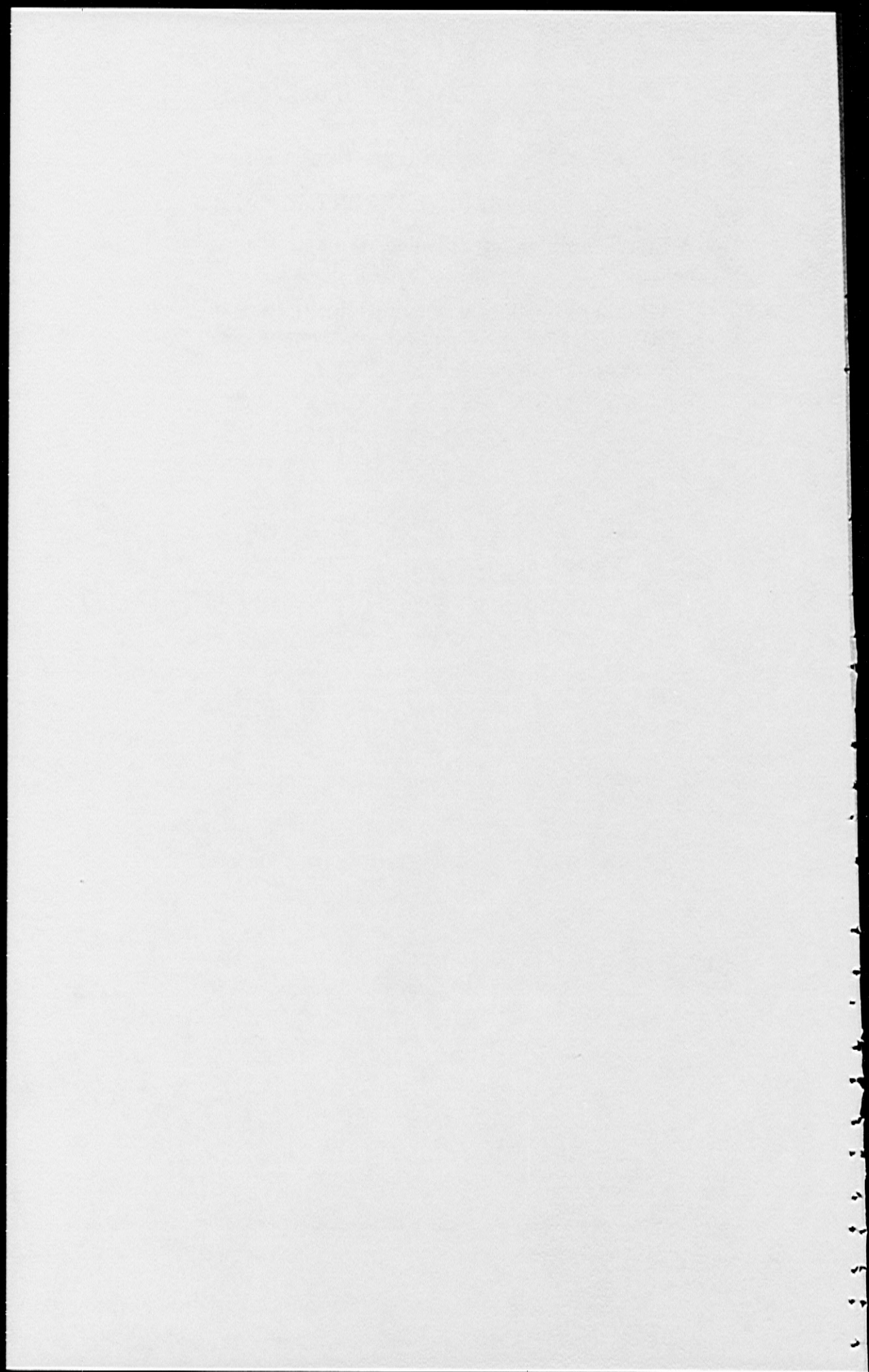
* Cases chiefly relied upon are marked by asterisks.

ISSUE PRESENTED *

In the opinion of appellee, the following issue is presented:

Whether appellant was denied due process of law because of the delay of five months and one week between his offense and his arrest?

* This case has not previously been before this Court.



United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 71-1099

UNITED STATES OF AMERICA, *Appellee*,

v.

ROBERT L. PHILLIPS, *Appellant*.

Appeal from the United States District Court
for the District of Columbia

BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

On April 27, 1970, an indictment was filed charging appellant in three counts with violations of the Federal Narcotics Laws. 26 U.S.C. § 4705(a), 26 U.S.C. § 4704(a) and 21 U.S.C. § 174. On July 20, 1970, appellant was tried before the Honorable Barrington D. Parker, sitting with a jury, and was found guilty as charged. On November 20, 1970 Judge Parker sentenced appellant to five years each on counts one and three, and one to three years on count two, said sentences to run concurrently. This appeal followed.

Shortly after joining the Metropolitan Police in June of 1969, Officer William A. Saunders began undercover work for the Narcotics Squad (Tr. 18). At approximately

4:30 p.m. on September 4, 1969, while still under cover,¹ he entered the Fantasy Bar at 1355 U Street, N. W. Officer Saunders saw appellant, whom he knew as "Patch," in the back of the bar (Tr. 10, 23, 47).² He approached appellant and asked him if he had some "stuff." Appellant said, "Yes," and added that it would cost "two dollars for a boy."³ The officer gave appellant \$4.00 from Metropolitan Police advance funds and asked for "two boys." Appellant handed him two gelatin capsules which contained a white powder and stated that it was "good stuff" (Tr. 10).

On the following day Officer Saunders turned the two gelatin capsules over to Sergeant Anthony J. Morris and Officer Steven S. Finkelberg of the Narcotics Squad (Tr. 12, 61, 81). After a preliminary field test, both capsules were sent to the Bureau of Narcotics and Dangerous Drugs (B.N.D.D.) (Tr. 2, 61, 81). Mr. Robert C. Arnold, a B.N.D.D. chemist, performed a chemical and microscopic analysis which showed that both capsules contained heroin (Tr. 3-7).

On Decembr 22, 1969, a United States Magistrate's Arrest Warrant was issued for appellant (Tr. 13, 29, 82). On February 11, 1970, appellant was arrested in the 1300 block of U Street, N. W., by Officers Finkelberg and Dobson (Tr. 13-14, 29, 64). Officer Saunders was present at the time of arrest and identified appellant on the scene (Tr. 14).

Appellant testified in his own defense that he had been working in the Fantasy Bar "for over a year" but that he had never sold narcotics to anyone (Tr. 107-108, 115-116). On cross-examination appellant admitted that some people called him "Patch" (Tr. 109).

¹ Saunders served in an undercover capacity for nine months starting in July of 1969 (Tr. 8).

² Saunders testified that he had seen appellant in the bar on "five or six" other occasions (Tr. 9, 24).

³ Officer Saunders testified that he understood "boy" to mean heroin (Tr. 10).

ARGUMENT

Appellant should be precluded from raising, for the first time on appeal, the issue of delay between the offense and the arrest; and in any event appellant was not denied due process because of the delay of five months and one week between offense and arrest.

(Tr. 9-10, 13-14, 23-24, 26, 29-33, 38, 46-48, 50, 54-55, 63-65, 74, 83, 108, 110)

Appellant here, for the first time, claims that the delay between his offense and his arrest resulted in a denial of due process. His failure to raise this issue in the trial court should preclude a determination of the issue by this Court on appeal. See *Hood v. United States*, 125 U.S. App. D.C. 16, 17 n. 1, 365 F.2d 949, 950 n. 1 (1966); cf. *Bynum v. United States*, 133 U.S. App. D.C. 4, 5, 408 F.2d 1207, 1208 (1968), cert. denied, 394 U.S. 935 (1969); *United States v. Indiviglio*, 352 F.2d 276, 280 (2d Cir. 1965) (en banc), cert. denied, 383 U.S. 907 (1966); *Haddad v. United States*, 349 F.2d 511 (9th Cir.), cert. denied, 382 U.S. 896 (1965). But in the event this Court should decide to consider appellant's argument, we maintain that there was no denial of his Fifth Amendment rights.

The circumstances of appellant's case do not require relief under the principles enunciated in *Ross v. United States*, 121 U.S. App. D.C. 233, 349 F.2d 210 (1965), and *Woody v. United States*, 125 U.S. App. D.C. 192, 370 F.2d 214 (1966). In *Ross* the defendant was charged with one sale of narcotics. The Government's case rested solely on the uncorroborated testimony of the undercover officer making the purchase, who had made numerous buys from other persons over an extended period of time. The undercover officer had no independent recollection of the incident and could testify only by referring to his notes. This Court held that his uncorroborated identification of the defendant under these circumstances was unreliable as a result of the purposeful pre-arrest delay of seven months. Similarly, the *Woody* case also involved a single sale of narcotics to

an undercover officer. The transaction occurred just before midnight on a sidewalk crowded with pedestrian traffic and lasted about a minute and a half. Four months later the defendant was arrested. At trial the undercover officer stated that he was relying heavily on his notes for his testimony and doubted that he could testify without them. Significantly, there was no opinion of the Court in *Woody*; each of the three judges on the panel wrote a separate opinion. Chief Judge Bazelon voted to reverse on the ground that there were special circumstances with respect to the method of identification which rendered it unreliable.⁴ Judge McGowan also voted to reverse, but on the ground that the defendant had been prejudiced by the loss of a potential witness during the four-month delay.⁵

The case at bar is similar to *Ross* and *Woody* in that it involves a single narcotics transaction with an undercover officer. However, it is readily distinguished by the existence of evidence which corroborates the undercover officer's identification, as well as the absence of any "special circumstances" arising from the pre-arrest delay which might have prejudiced appellant in the preparation or presentation of his defense. Officer Saunders testified that he had seen appellant on five or six occasions prior to the day of the sale and knew him by the nickname "Patch" (Tr. 9-10, 23-24, 47).⁶ Cf. *Worthy v. United States*, 122 U.S. App. D.C. 242, 352 F.2d 718 (1965), *vacated on other grounds*, 384 U.S. 894 (1966); *Bey v. United States*, 121 U.S. App. D.C. 337, 350 F.2d 467 (1965), *cert. denied*, 385 U.S. 905 (1966). During the course of the transaction the undercover officer and appellant discussed the quantity, price and quality of the narcotics that were to be sold. After receiving two gelatin capsules, he approached appellant

⁴ The undercover officer identified the defendant by means of a photograph one week after the arrest and failed to make complete notes after the sale regarding the seller's description.

⁵ Circuit Judge (now Chief Justice) Burger dissented and voted to affirm.

⁶ Apparently appellant's nickname results from an unusual growth of facial hair on his right cheek, described by the undercover officer as a "patch of hair . . . like a goatee" (Tr. 46, 48).

a second time and commented on the quality of the narcotics he had purchased (Tr. 10-11). The undercover officer left the bar and returned to his home with the narcotics, where he made a written report of the incident (Tr. 12). In this written report he referred to the seller as "John Doe, number eight, Name: Patch. Negro male 25 to 28 years old, 175 pounds, five feet, nine inches, and a medium dark complexion." (Tr. 38.)⁷ This was the only narcotic purchase he made that day (Tr. 50). Officer Saunders also recalled seeing appellant inside the bar shortly after the arrest warrant was issued (Tr. 50, 54-55, 64).⁸ More importantly, he was present when appellant was arrested and positively identified him as "Patch" (Tr. 13-14, 30-31, 65). Compare *United States v. Gaines*, 140 U.S. App. D.C. 402, 436 F.2d 150 (1970). Clearly, the problems that existed in *Ross* and *Woody* with respect to the reliability of the identification are not present here. See *Woody v. United States*, *supra*, 125 U.S. App. D.C. at 195 n. 6, 370 F.2d at 217 n. 6.

Appellant makes the statement that "the prejudice in this case is obvious and overwhelming," alluding to the undercover officer's in-court identification made one year after the date of the offense (Brief for Appellant at 5-6). It is well established that an accused has the burden of making a plausible claim of prejudice since "it would be unreasonable to put the burden of negating prejudice on the Government because in almost all cases the accused will have peculiar knowledge of facts which might constitute prejudice." *Jackson v. United States*, 122 U.S. App. D.C. 124, 126, 351 F.2d 821, 823 (1965). Appellant does not contend

⁷ During cross-examination Officer Finkelberg, the arresting officer, stepped down from the witness stand and described appellant as "Negro male, approximately 25 to 30 years old, a dark complexion, about five foot seven inches to five foot nine inches, bush style black haircut, brown eyes, a mustache and a patch of hair on the right side of his face. He weighs approximately 175 to 190 pounds." (Tr. 74.)

⁸ Upon seeing appellant, Saunders left the bar and notified other police officers who were waiting outside. He described appellant as being "five foot nine, 170 pounds, hair on the side of his face and dark complexioned." (Tr. 55.) While Saunders remained outside in a car, the police entered the bar but were unable to locate appellant (Tr. 50).

that he was unable to reconstruct the events of the day on which the sale occurred, or that the pre-arrest delay caused him to lose a witness who could have testified in his behalf. Nor is he able to show an unreliable identification. In short, appellant has not met his burden of establishing a "plausible claim of prejudice." See *Dancy v. United States*, 129 U.S. App. D.C. 413, 415, 395 F.2d 636, 638 (1968); *Powell v. United States*, 122 U.S. App. D.C. 229, 232, 352 F.2d 705, 708 (1965); *Nickens v. United States*, 116 U.S. App. D.C. 338, 340, n. 2, 323 F.2d 808, 810 n. 2 (1963).

Appellant also alleges a lack of due diligence on the part of the police in executing the arrest warrant. At the outset it must be noted that up to the time of appellant's arrest the police did not know where he was living, nor did they have a photograph from which an identification could be made by anyone other than the undercover officer (Tr. 29, 31-32, 83).⁹ Equally important is the fact that the undercover officer had been transferred out of the area of Fourteenth and U Streets, N.W., and was engaged in undercover work in another part of the city (Tr. 26, 32). Officer Saunders testified that when he was not working at this new assignment, he and other members of the Narcotics Squad would look for appellant in the area around the Fantasy Bar (Tr. 14, 32-33, 50, 63). In searching for appellant, Officer Saunders entered the bar on two separate occasions. On one of those occasions he did see appellant but was unsuccessful in his attempt to have appellant arrested. This incident occurred shortly after the warrant was issued (Tr. 50, 54-55, 64).

Appellant asserts that he worked at the Fantasy Bar and could be found there on a regular and daily basis. However, the testimony at trial revealed that he was not carried on the books as an employee, nor did he receive a direct salary from the management. At most he had an informal agreement with one Vic Barnes, who was employed by the Fantasy Bar as the janitor, whereby Barnes would pay

⁹ The Bail Agency Report filed December 1, 1970, indicates that appellant had been in the Washington area for five years and had no local arrest record.

appellant whenever he helped out (Tr. 108, 110). With regard to his work schedule, appellant testified:

Some days I may go in at 9:30 a.m. and clean up until 11:30 a.m., or sometimes I don't get through until late, around 2:30 p.m. or 3 o'clock p.m. . . . Then sometimes I come back again late at night. (Tr. 116.)

It is significant that the undercover officer who had observed appellant's behavior in the bar on five or six occasions prior to the sale did not get the impression that appellant was employed there (Tr. 24).¹⁰

CONCLUSION

WHEREFORE, appellee respectfully submits that the judgment of the District Court should be affirmed.

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¹⁰ Appellant also seeks a reversal of his conviction on the ground that the evidence was insufficient to support the verdict. This contention is patently without merit. In *Wilson v. United States*, 118 U.S. App. D.C. 319, F.2d 982 (1964), this Court held that the uncorroborated testimony of a narcotics agent is sufficient to support conviction for violation of narcotics laws. *Accord*, *Morgan v. United States*, 115 U.S. App. D.C. 310, 319 F.2d 711 (1963). We dispute appellant's premise that Officer Saunders' testimony was uncorroborated, for we find corroboration in the testimony of Officer Finkelberg and in the very narcotics themselves.

But in any event, assuming *arguendo* that there is no corroboration for the testimony of the undercover officer, we submit that appellant has failed to present this Court with any plausible claim of prejudice which would justify abandonment of the rule laid down in *Wilson* and *Morgan*.

that he was unable to reconstruct the events of the day on which the sale occurred, or that the pre-arrest delay caused him to lose a witness who could have testified in his behalf. Nor is he able to show an unreliable identification. In short, appellant has not met his burden of establishing a "plausible claim of prejudice." See *Dancy v. United States*, 129 U.S. App. D.C. 413, 415, 395 F.2d 636, 638 (1968); *Powell v. United States*, 122 U.S. App. D.C. 229, 232, 352 F.2d 705, 708 (1965); *Nickens v. United States*, 116 U.S. App. D.C. 338, 340, n. 2, 323 F.2d 808, 810 n. 2 (1963).

Appellant also alleges a lack of due diligence on the part of the police in executing the arrest warrant. At the outset it must be noted that up to the time of appellant's arrest the police did not know where he was living, nor did they have a photograph from which an identification could be made by anyone other than the undercover officer (Tr. 29, 31-32, 83).⁹ Equally important is the fact that the undercover officer had been transferred out of the area of Fourteenth and U Streets, N.W., and was engaged in undercover work in another part of the city (Tr. 26, 32). Officer Saunders testified that when he was not working at this new assignment, he and other members of the Narcotics Squad would look for appellant in the area around the Fantasy Bar (Tr. 14, 32-33, 50, 63). In searching for appellant, Officer Saunders entered the bar on two separate occasions. On one of those occasions he did see appellant but was unsuccessful in his attempt to have appellant arrested. This incident occurred shortly after the warrant was issued (Tr. 50, 54-55, 64).

Appellant asserts that he worked at the Fantasy Bar and could be found there on a regular and daily basis. However, the testimony at trial revealed that he was not carried on the books as an employee, nor did he receive a direct salary from the management. At most he had an informal agreement with one Vic Barnes, who was employed by the Fantasy Bar as the janitor, whereby Barnes would pay

⁹ The Bail Agency Report filed December 1, 1970, indicates that appellant had been in the Washington area for five years and had no local arrest record.

appellant whenever he helped out (Tr. 108, 110). With regard to his work schedule, appellant testified:

Some days I may go in at 9:30 a.m. and clean up until 11:30 a.m., or sometimes I don't get through until late, around 2:30 p.m. or 3 o'clock p.m. . . . Then sometimes I come back again late at night. (Tr. 116.)

It is significant that the undercover officer who had observed appellant's behavior in the bar on five or six occasions prior to the sale did not get the impression that appellant was employed there (Tr. 24).¹⁰

CONCLUSION

WHEREFORE, appellee respectfully submits that the judgment of the District Court should be affirmed.

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¹⁰ Appellant also seeks a reversal of his conviction on the ground that the evidence was insufficient to support the verdict. This contention is patently without merit. In *Wilson v. United States*, 118 U.S. App. D.C. 319, F.2d 982 (1964), this Court held that the uncorroborated testimony of a narcotics agent is sufficient to support conviction for violation of narcotics laws. *Accord*, *Morgan v. United States*, 115 U.S. App. D.C. 310, 319 F.2d 711 (1963). We dispute appellant's premise that Officer Saunders' testimony was uncorroborated, for we find corroboration in the testimony of Officer Finkelberg and in the very narcotics themselves.

But in any event, assuming *arguendo* that there is no corroboration for the testimony of the undercover officer, we submit that appellant has failed to present this Court with any plausible claim of prejudice which would justify abandonment of the rule laid down in *Wilson* and *Morgan*.